

QUESTIONS AND ANSWERS

(I) SECTION 303(g), SSA; (II) ORIGINAL AGREEMENT UNDER 303(g); (III) MODIFIED AGREEMENT; (IV) IMPACT ON STATE LAW OF ORIGINAL OR MODIFIED AGREEMENT; (V) IMPACT ON FEDERAL PROGRAMS; (VI) INTERSTATE RECIPROCAL OVERPAYMENT RECOVERY ARRANGEMENT AND INTERSTATE RECOVERY PROCEDURES

I. SECTION 303(g), SSA

A. Question: Is participation in the recovery of overpayments by offset provided by Section 303(g) mandatory or optional?

Answer: It is optional. A State must review its own UC law to see if it has authority to engage in the various types of offset programs authorized by Section 303(g) before signing any Agreement.

B. Question: What types of offsets are allowed under the provisions of Section 303(g)?

Answer: The types of offset allowed by 303(g) are as follows:

1. Interstate Offset

a. the withholding of State UC benefits payable by State A to recover an overpayment made by State B under its State UC program, and

b. the withholding of Federal UC benefits payable by State A to recover an overpayment made by State B under a Federal UC program.

2. Intrastate Cross-Program Offset

a. the withholding of State UC benefits payable by State A to recover an overpayment made by State A under a Federal UC program and

b. the withholding of Federal UC benefits payable by State A to recover an overpayment made by State A under its State UC program.

Note: The authority for withholding of UC benefits under one Federal program payable by State A to recover an overpayment made by State A under the same or a different Federal program continues in effect under previously existing statutory authority.

3. Interstate Cross-Program Offset

a. the withholding of State UC benefits payable by State A to recover an overpayment made by State B under a Federal UC program and

b. the withholding of Federal UC benefits payable by State A to recover an overpayment made by State B under its State UC program.

C. Question: If a State participates in intrastate cross-program offset or interstate cross-program offset, may it elect to only recover State overpayments from Federal UC benefits payable but not recover Federal overpayments from State UC benefits payable?

Answer: No. Cross-program offsets are authorized by Section 303(g), SSA, which includes the statutory requirement of a reciprocal agreement between the State and the Secretary of Labor. As provided in Article II of the Agreement, the reciprocal feature of cross-program offset is the essence of the Agreement.

II. ORIGINAL AGREEMENT UNDER 303(g)

A. Question: What is the basic purpose of an Agreement?

Answer: An Agreement fulfills the statutory requirements of Section 303(g)(2) that sets the conditions for implementing cross-program offset within and between States.

B. Question: By signing the original Agreement with the Secretary, dated August 14, 1986, what is the State's obligation?

Answer: The State must at a minimum: 1) Recover from State unemployment benefits payable to an individual, filing an intrastate claim, any overpayment made by such State under an unemployment benefit program of the United States (such as, UCFE, UCX, DUA, TRA, REPP and FSC) to such individual; and recover from unemployment benefits payable under an unemployment benefit program of the United States to an individual, filing an intrastate claim, any overpayment made by such State under a State unemployment benefit program; and 2) if the State elects to participate in any interstate offset

it must participate in both interstate and interstate cross-program offset with all other States which have entered into an interstate arrangement and have also signed an Agreement with the Secretary.

C. Question: By signing the original Agreement with the Secretary, is the State obligated to participate in any offset besides the intrastate cross-program offset?

Answer: Article III of the original Agreement obligates the State to participate in interstate cross-program offsets only if the State elects to participate in any interstate offset (immediately or in the future). Article III further obligates the State to participate with all States that have elected to implement an interstate offset arrangement if it participates with any State.

D. Question: May a State sign the original Agreement if State law precludes it from participating in interstate offset and/or interstate cross-program offset?

Answer: Yes. The interstate obligation contained in Article III of the Agreement is triggered only when the State elects to participate in an interstate recovery program with another State.

E. Question: May a State sign the original Agreement if State law allows recovery by offset for fraud overpayments only?

Answer: No. Section 303(g)(2), provides that:

"(2) Any State may enter in an agreement with the Secretary of Labor under which--

(A) the State agrees to recover from unemployment benefits otherwise payable to an individual by such State any overpayments made under an unemployment benefit program of the United States to such individual. . . .(emphasis added)

(B) the United States agrees to allow the State to recover from unemployment benefits otherwise payable to an individual under an unemployment benefit program of the United States any overpayments made by such State . . . .  
(emphasis added)"

Therefore, the Federal law does not contain authority to limit the offset Agreement to a specific type of overpayment, such as fraud overpayments.

### III. MODIFIED AGREEMENT

A. Question: What should a State do if it has signed the original agreement but wishes to participate in interstate offset and interstate cross-program offset with only a limited number of States?

Answer: If a State signed the original Agreement it should terminate that Agreement in accordance with Article VIII. In addition, the State should request a modified Agreement, or prepare a modified Agreement, substituting for Articles III and VII as now written the following language:

"III. The State and the Secretary further agree that if the State elects to participate in any interstate offset program to recover overpayments with any other State(s) that has also signed an Agreement with the Secretary, it will implement cross-program offset with respect to State and Federal benefit overpayments made by the State and such other State(s)."

"VII. This Agreement is effective on and after the date it is signed below on behalf of the State and by the Secretary of Labor, whichever is later, and shall constitute an addendum to the agreements between the State and the Secretary under the programs listed in Article VI."

B. Question: What should a State do if it has not signed an Agreement with the Secretary of Labor, wishes to sign an Agreement but only wishes to participate in interstate offset with a limited number of states?

-5-

Answer: The State should prepare two originals of the modified Agreement with the new Articles III and VII referred to in Answer III.A. Both originals of the Agreement should be signed by the Governor (or other authorized State official) on behalf of the State and sent to the Unemployment Insurance Service, Attention: Carolyn M. Golding, Director. After the modified Agreement is signed by the U.S. Secretary of Labor, one of the signed originals will be returned to the State for its records. The Agreement would be effective on the date it is signed by the Secretary, or on the date specified in the Agreement.

C. Question: Would the modified Agreement obligate a State to participate in interstate offset and interstate cross-program offset?

Answer: No. The State has the option to elect whether it shall participate in interstate offset with any other State or States. The modified Agreement does obligate a signatory State to participate in interstate cross-program offset only with those States that the State elects to participate with in any interstate offset arrangement and which have also signed an original or modified Agreement with the Secretary.

D. Question: What other modifications may a State make to the Agreement?

Answer: Article VIII of the Agreement provides that the Agreement may be amended by mutual consent of both parties. If a State wishes to propose any other changes, besides the one suggested in Answer III. A., the Agreement should be returned with a cover letter explaining the desired changes. If the Secretary of Labor agrees to the modifications, the revised Agreement will be signed and returned to the State for signature.

E. Question: Is there any time limit for a State to sign an Agreement?

Answer: No. However, if a State decides not to sign or to postpone signing an Agreement for any reason (such as pending the enactment of authorizing legislation) it is requested that the State notify the ETA Regional Administrator.

F. Question: If, after reviewing these questions and answers, a State wishes to terminate the original Agreement it has previously signed, what should it do?

Answer: The State should provide written notification of termination to the Secretary of Labor, as provided in Article VIII of the Agreement. Termination will be effective 30 days after the postmark date of the notice. Article VIII also expresses the close-out obligations of the State.

IV. IMPACT ON STATE LAW OF ORIGINAL OR MODIFIED AGREEMENT

A. Question: Does the Agreement affect State law provisions relating to waiver of overpayment recovery?

Answer: No. The Agreement has no effect on State law provisions relating to waiver of overpayment recovery. States should continue to apply these provisions. However, it is the law of the State that established the overpayment (i.e. the Requesting State) that applies, not the waiver provisions (if any) of the law of the Recovering State. In addition, in some Federal programs (UCFE/UCX fraud cases, FSC and TRA) there are Federal statutory provisions on recovery (including waiver) of overpayments, and where such provisions exist State law does not apply.

B. Question: In recovering an overpayment for another State, may the Recovering State apply its law pertaining to the limitations on the amount recouped by weekly offset?

Answer: Yes. As in the previous answer, it is the law of the State which is responsible for the action that prevails. In this case, the Recovering State must apply its provisions for limitations on the amount recouped by weekly offset; on this point, the law of the Requesting State is inapplicable. In addition, in some Federal programs (FSC and TRA) there is a statutory limitation on the amount that may be offset, and where such provisions exist State law does not apply.

C. Question: Does the Agreement affect State law provisions establishing a statute of limitations on waiver of overpayment recovery and offset limitations?

Answer: No. State law provisions establishing a statute of limitations still apply. The Requesting State's statute of limitations applies to the recoverability of the overpayment (including waiver--see Q and A IV.A.). If the Requesting State's statute of limitations has been reached and the overpayment is no longer legally recoverable by offset, it should not request another State to recover the overpayment.

The Recovering State's statute of limitations is applicable in regard to its authority to offset and will operate to preclude offset where the Recovering State's statute has been reached.

In addition, in some Federal programs (such as UCFE/UCX fraud cases, FSC and TRA) there are Federal statutory provisions which are controlling and State law does not apply.

#### V. IMPACT ON FEDERAL PROGRAMS

A. Question: Section 243(a)(2) of the Trade Act of 1974, limits recovery by offset of overpayments made under the Act to 50% of the benefit amount otherwise payable. Does this limitation apply when Trade Readjustment Allowances (TRA) are used to recover State or other Federal UC overpayments?

Answer: No. This restriction only applies to the recovery of overpayments made under the Trade Act. Thus it does not apply when TRA benefits are offset to recover State benefit overpayments or other Federal benefit overpayments.

B. Question: Section 303(g)(3) does not include Trade Adjustment Assistance (TAA) paid under the Trade Act, other than Trade Readjustment Allowances (TRA), in the definition of "unemployment compensation" covered by Section 303(g). Are these other TAA overpayments recoverable by offset of State UI benefits?

Answer: No. The non-TRA portion (job search, relocation, and training related allowances) of a TAA overpayment may not be recovered by offset of State benefits. However, these kinds of TAA overpayments can be recovered by offset of other Federal benefits payable, subject to the limitations in Sections 243(a)(2) and 243(c).

C. Question: Does the 2-year statute of limitations under 5 U.S.C. 8507 to collect UCFE or UCX fraud overpayment by offsetting UCFE or UCX benefits payable still apply?

Answer: Yes. The statute of limitations on recovering UCFE or UCX fraud overpayments from UCFE or UCX benefits payable has not changed. Although 303(g) has broadened the programs from which UCFE and UCX overpayments may be recovered, the statute of limitations still applies to such recoveries by offset.

D. Question: Does Federal law prescribe a statute of limitations for recovery of UCFE or UCX nonfraud overpayments?

Answer: No. State law applies to the recovery of nonfraud overpayments in the UCFE and UCX programs. See 20 CFR 609.11(c-h) and 20 CFR 614.11(c-h).

E. Question: DUA benefits are designated for a specific disaster. To which account should DUA overpayment amounts recovered by offset be credited?

Answer: The Federal Emergency Management Administration does not permit pooling of disaster funds. DUA overpayment amounts recovered by offset will be credited to the account for the specific disaster under which the overpayment occurred, consistent with procedures used when an overpayment is collected directly from the claimant.

#### VI. INTERSTATE RECIPROCAL OVERPAYMENT RECOVERY ARRANGEMENT AND INTERSTATE RECOVERY PROCEDURES

A. Question: What is the Interstate Reciprocal Overpayment Recovery Arrangement (Arrangement) referred to in UIPL 50-86?

Answer: The Arrangement is a reciprocal agreement now being developed by the ICESA Interstate Benefit (IB) Committee to facilitate interstate recovery of overpayments.

B. Question: Will ETA be involved in the implementation of the Arrangement?



Answer: Yes. ETA is working with the IB Committee to develop the Arrangement and implementing procedures. ETA will issue the procedures as a change to ET Handbook 392 when the Arrangement is made available to the States by ICESA. Both are expected to be made available soon. ETA will have a continuing role in monitoring implementation of the Arrangement to assure compliance with Section 303(g) and Section 3304(d)(9) of the FUTA.

C. Question: If a State becomes a participant in the Arrangement and has not signed a 303(g)(2) Agreement with the Secretary, is it thereby obligated to participate in interstate cross-program offset?

Answer: No, in fact, it may not do so. The purpose of the Arrangement is to establish procedures to facilitate the interstate recovery of State and/or Federal benefit overpayments. If, in fact a State has not entered into an Agreement with the Secretary, it may not participate in the cross-program offset. However, if a State elects to participate in the Arrangement and has signed a 303(g)(2) Agreement with the Secretary, it is obligated (by Article III of the original and modified Agreement) to participate in Interstate Cross-Program Offset with all other participants in the Arrangement that also have signed an Agreement with the Secretary.

D. Question: May a State elect to participate in the Arrangement and not the Agreement, or vice versa?

Answer: Yes. The provisions of Section 303(g) simply authorize a State to elect to participate in interstate and cross-program recovery of overpayments by offset of benefits payable. The Arrangement and the Agreement are separate undertakings, and a State may elect either one, or both, or neither.

E. Question: If a State is not a participant in the Arrangement, may it participate in a cooperative interstate offset system with a limited number of States?

Answer: Yes. There is no requirement under Section 303(g)(1), to enter into the Arrangement if a State wishes to participate in a more limited program of interstate offset. However, Section 303(g)(1) applies to any State electing to participate in any interstate offset program, and it therefore must follow the procedural requirements of section 303(g)(1).

F. Question: What are the procedural requirements referred to in Answer VI.E?

Answer: Section 303(g) requires that the offset of an overpayment under a 303(g) program "shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing" as are required by the State law for the recovery of regular benefits. Therefore, any interstate program must provide such procedural safeguards. Further elaboration of this requirement is contained in UIPL 50-86. Such procedures are also required by Sections 303(a)(1) and 303(a)(3), SSA, and the Claim Determinations Standard, Sections 6010-6015, Part V of the Employment Security Manual.

G. Question: Are additional administrative funds available to those States participating in an interstate offset arrangement?

Answer: No. The cost of this activity is to be covered by existing administrative funds. Additional funds are not available. However, States have the flexibility to use base grants as they determine appropriate within the current guidelines.